

**SMITH & LOWNEY, P.L.L.C.**

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EPA Region 10

Office of the Regional Administrator

June 5, 2019

**Via Certified Mail - Return Receipt Requested**

Dale and Janelle Wilton  
4808 139<sup>th</sup> Ave. SE  
Snohomish, Washington 98290-4630

Re: **NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND  
REQUEST FOR COPY OF STORMWATER POLLUTION PREVENTION  
PLAN**

Dear Mr. and Ms. Wilton:

We represent Friends of the San Juans, PO Box 1344 Friday Harbor, WA 98250, (360) 378-2319. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days notice of Friends of the San Juans' intent to file a citizen suit against you, Dale and Janelle Wilton, under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described below.

You have violated and continue to violate Sections 301(a), 402 and 404 of the CWA, 33 U.S.C. §§ 1311(a), 1342 and 1344, by discharging pollutants from your construction site via point source to waters of the United States without an NPDES permit required under Section 402, and by discharging dredged or fill materials to waters of the United States without a permit from the United States Army Corps of Engineers ("Army Corps") required under Section 404.

Unpermitted Fill Discharges

You are in the process of constructing a large house on wetland property at the edge of an estuary bordering Neck Point Cove, located at or about 258 Sylvan Circle on Shaw Island in San Juan County ("the property"). As part of your construction site preparation, you or your agents have conducted land clearing activities and imported fill, rocks, and other construction materials to the construction site, stockpiling material and altering the topography of its wetland property. In addition, you have poured concrete into wetlands for the house foundation, concrete which has also spilled or migrated outside the concrete molds further into the wetland, all of which are considered additional discharges of pollutants and fill material without a permit, in violation of the CWA. Through this work, you have discharged fill and dredged material and other pollutants beginning on or about October of 2018 on its property, but never received authorization from the Army Corps. You discharged this material and pollutants into jurisdictional wetlands that constitute waters of the United States under the CWA. The discharges of pollutants resulting from these activities are



continuing through the present and the discharged fill and dredged material remain in place in waters of the United States.

#### Unpermitted Point Source Pollutant Discharges:

Since you poured the concrete foundation described above, you have also discharged construction dewatering water, water with altered pH, silt, dissolved and suspended solids, dirt, sand, petroleum hydrocarbons, uncured concrete and other pollutants from the foundation via point source to Neck Point Cove, which is part of the Strait of Georgia. You discharge these pollutants by pumping out polluted water that has accumulated inside the new foundation and become contaminated. You pump this polluted water through a hose and **convey the pollutants** to the Cove, either directly or through discrete surface flows that reach the Cove. These unpermitted discharges began in October of 2018 and occur each and every day there is visible water within the foundation, which dates are known to you or your agents. These discharges are reasonably likely to recur as there is no indication that you intend to cease the construction project, the pump and hose is still on site, and dewatering the foundation will be necessary to complete the project.

#### Conclusion:

The above-described violations reflect those indicated by the information currently available to Friends of the San Juans. These violations are ongoing. Friends of the San Juans intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

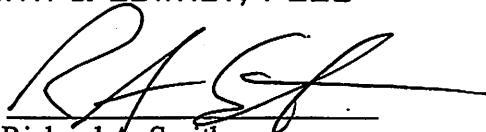
Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4, each of the above-described violations subjects the violator to a penalty of up to \$54,833 per day for each violation that occurred since November 2, 2015. In addition to civil penalties, Friends of the San Juans will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Friends of the San Juans believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Dale and Janelle Wilton under Section 505(a) of the Clean Water Act for the above violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations addressed in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

SMITH & LOWNEY, PLLC

By:   
Richard A. Smith

cc: Andrew Wheeler, Administrator, U.S. EPA  
Chris Hladick, Region 10 Administrator, U.S. EPA  
Maia Bellon, Director, Washington Department of Ecology